

**Rocky Flats Citizens Advisory Board
Recommendation 96-8
on the Draft Rocky Flats Cleanup Agreement**

**to the Department of Energy, the Environmental Protection Agency and the
Colorado Department of Public Health and Environment**

Approved May 2, 1996

The Rocky Flats Cleanup Agreement (RFCA) is a commendable attempt on the part of DOE and the regulators to move ahead with actual cleanup activities. The Rocky Flats Citizens Advisory Board (RFCAB) is pleased to be able to comment on this draft document. It is vital that this community be in agreement with the goals expressed in the Vision/Preamble and the mechanisms, benchmarks, and procedures for achieving these goals are laid out in the RFCA and the "Implementing Document." Therefore, RFCAB offers the following comments in the hopes that this community, including DOE and the regulators, can arrive at a mutually agreeable plan for moving the cleanup of Rocky Flats forward.

Recommendations

General

1. Because RFCA allows for lengthy and complex dispute resolution procedures between the agencies; numerous processes in which a party can initiate a change in work or plans already agreed upon; and defenses for failure to meet milestones, the parties should be judicious in their use of the dispute resolution processes to prevent undue delay in actual cleanup activities.
2. As RFCA stands, the attachments to the document are enforceable, but the appendices are not. The appendices should be made part of the agreement and enforceable, especially 3, which will contain the Implementation Guidance Document; 4, Summary Level Baseline; 5, Water Management; and 6, Special Nuclear Materials Major Activities.
3. Because of waste disposition uncertainties, RFCAB believes, as it has maintained in the past, that waste and materials management at Rocky Flats should involve monitored and retrievable long-term storage options. RFCAB urges the parties to consider the future safety of the public and the environment in planning waste management planning and implementation. These activities should not be done under uncertain assumptions, and should be done with considerations of the safety of future generations.

Vision/Preamble

General

The Vision is vague where it needs to be specific, and tends to obfuscate crucial details. It needs to be written in clear, precise language, containing goals that accurately reflect the desire of the community.

Cleanup Guidelines

RFCAB believes that the cleanup levels should become more stringent over time, even if actual land use does not change.

On-Site Radioactive Waste Disposal

RFCAB was very clear in its comments on the original Vision: "Radioactive waste disposal is not acceptable at Rocky Flats. DOE should develop plans for long-term storage of waste in a manner that is fully monitorable and retrievable." We urge the Agencies to clearly incorporate this principle into the Vision/Preamble.

Ultimate Cleanup to Background Level

RFCAB was very clear on the following point in its previous recommendation:

Initial cleanup efforts for radionuclides need to achieve levels that are protective of human health and the environment as is currently possible. Such levels need to be determined through a process that fully involves the public. The goal for final cleanup should be achievement of average background levels for Colorado, when technology allows for this in a cost-effective, environmentally sensitive manner.

The Agencies should be committed to this goal and pursuing the technology needed to achieve it. This should be the stated activity of the Long-Term Site Condition. There should be periodic reassessment of cleanup standards and technology development. This could be combined with the five year periodic review described in Part 20, paragraph 242 of the RFCA.

Waste Management

On-site waste management options in RFCA currently include disposal. Any waste on-site should be in a safe form in a fully monitorable and retrievable facility. Any long or short-term storage should provide for the waste to be feasibly retrieved if a hazard arises or if new remediation technologies are developed.

Transuranic Waste / WIPP

Neither the Vision/Preamble nor RFCA address any contingency plans for the disposal of TRU waste if WIPP does not become available. It is highly uncertain that another offsite storage facility will be identified, sited and constructed any time soon if WIPP does not open. RFCA should address a contingency plan for the management of TRU waste if WIPP is not available.

Plutonium Storage

The 2015 date is a non-enforceable target, and safety of plutonium storage should not be compromised by plans based on this date. The original Vision stated, "DOE must store SNM on-site safely until an alternative location becomes available." This has been removed from the current version. It is imperative that plutonium is stored on-site in the safest possible manner. This dictates the wisdom of construction of a new plutonium storage facility.

Water Quality

RFCA states: "Water quality management plans will be developed with the participation and involvement of municipalities and counties whose water supplies are potentially affected by the Site." There should also be public involvement in the development of water quality management plans.

Land Use

1. RFCA states, ".... specific future land uses and post-cleanup decisions will be developed in consultation with local governments." Future land use decisions need to be made in concert with all sectors of the affected community. This is the premise behind RFCAB and was the premise behind the Future Site Use Working Group.

2. DOE should purchase or protect all mineral rights at Rocky Flats as a means of protecting the health of the public and the environment, now and in the long-term. This would preserve the ecosystem, provide open space, and prevent possible adverse effects from disturbing any remaining surface. The Preamble and Vision should incorporate this idea.

ROCKY FLATS CLEANUP AGREEMENT

CAB/Public Involvement

1. RFCAB could be specifically mentioned and/or have the opportunity to be involved in several paragraphs detailed in Attachment 2. These paragraphs cover issues including RFCAB's role, planning and budget, consultation, document and milestone review, and requests for changes.

2. RFCAB should have a greater role in the dispute resolution process, such as involvement in the Dispute Resolution Committee established under paragraph 178, and involvement in site-wide disputes between the regulators under paragraph 198. At a minimum, RFCAB should be notified at the outset of

any dispute resolution process and be allowed to participate as an observer.

Regulatory Framework/DOE Authority

1. RFCAB is supportive of the Lead Regulator (LRA) concept in RFCA and Appendix 1 and the Memorandum of Understanding between the Agencies, with the following exceptions. RFCAB fully expects the Supporting Regulatory Agency (SRA) to play a very active role in reviewing all plans for actions proposed by DOE, and review all recommendations issued by the LRA.
2. The Defense Nuclear Facilities Safety Board (DNFSB) should not be the LRA for low level and transuranic waste activities. DNFSB does not have regulatory authority for activities involving radioactive waste (not SNM). DNFSB should serve as the SRA in an oversight role.
3. "Overall, the Department's inventory of plutonium represents significant hazards to workers, the public and environment . . ." Department of Energy, Plutonium Working Group Report, Vol. 1 Summary, p.24 (November, 1994). This vulnerability assessment detailed instability of material; and structural, container, procedural deficiencies that create plutonium hazards. RFCAB believes that evidence suggests that there is a threat of release of SNM, and therefore, CERCLA regulatory authority by an external agency is appropriate. RFCAB recommends that all plutonium milestones be enforced by an external regulator. We recommend that the DNFSB be the SRA for these activities.
4. RFCA states that field modifications can be done immediately by DOE if there are opportunities that would allow "work to be conducted in a more cost-effective manner while not compromising safety or protection of public health or the environment. Similarly "minor modification" means an alteration of the techniques or procedures by which the work is completed while still achieving "a substantially equivalent level of protection for workers and the environment." RFCAB recommends caution in allowing unilateral decisions (field or minor modifications) for work changes based on cost-savings alone. Some degree of consultation should accompany such proposals.
5. Any party and RFCAB, in addition to DOE, should be able to request a determination (through the dispute resolution process) that good cause exists for changing a regulatory milestone (paragraph 159).
6. RFCAB is concerned that budget appropriations not be the sole or primary factor in setting cleanup milestones. It is our expectation that the agencies, in consultation with DOE and RFCAB, will set an aggressive milestone schedule, and that DOE will meet this schedule. RFCAB also feels that it would make sense for Congress to institute a 3-5 year appropriations process to facilitate planning for cleanup.
7. RFCAB is concerned that accelerated cleanup decisions have the potential to be hasty, and that there may be excessive reliance on "no further action" remedy selection. The agencies and DOE should pay particular attention to public input during any accelerated cleanup activities. To allow a full public understanding of the series of cleanup decisions that will be considered in a given time period, DOE should follow through in preparing a full and credible Site Wide Environmental Impact Statement with a

10 year planning scope. This SWEIS should be revisited after 5 years, and the public should be fully involved in an annual review of the baseline. Finally, all major federal actions should be preceded by a full NEPA analysis.

Cleanup Standards

Note: RFCAB is in the process of doing more work on this issue and will be issuing further recommendations on cleanup principles and standards in the near future.

1. RFCAB reiterates its call for cleanup standards, including "No Further Action" determinations, to be developed through a process that fully involves the public. RFCAB does not feel that the current public process for the RFCA is the appropriate vehicle to make such important and technical decisions, particularly given the absence of important information.
2. RFCAB proposes that procedures be established to periodically review all cleanup standards (including near-term), technology development efforts, and to determine whether further cleanup actions are possible in line with RFCAB's recommendation of ultimate cleanup to background levels. Such a process, with appropriate public involvement, could be incorporated into the five year periodic review that will be conducted by EPA and CDPHE and is dictated by CERCLA to determine whether or not remedial actions that have left contaminants on-site are protective of public health and the environment.
3. Ultimate cleanup levels should not be established dependent upon institutional controls. We cannot guarantee that institutional controls will remain in place for future generations. Rather the goal should be cleanup to lower and lower levels over time so that institutional controls are no longer needed.
4. RFCA states: "No Further Action justification can be accomplished using minimal investigation and characterization if adequate historical release information and defensible data are available; additional environmental sampling may not always be necessary." No Further Action decisions should be based on current environmental sampling, as well as considerations of potential future contamination

Plutonium/Special Nuclear Materials

1. Currently, the plutonium-related milestones are not enforceable under RFCA. These milestones should be made enforceable. This would be in accordance with the Advisory Committee on External Regulation recommendations; it would increase public confidence in Rocky Flats operations; and it would help ensure funding to accomplish such milestones in a timely manner.
2. All parties should keep the Plutonium and Special Nuclear Materials Committee of the RFCAB fully and regularly informed of any situations that may have the potential to pose a "substantial threat of release of plutonium" as well as the current status of any plutonium or SNM milestones.
3. RFCA should address alternatives to the "ultimate removal of plutonium . . . no later than 2015,"

because it is uncertain when a repository will be available, the risks of transporting and disposing of plutonium remain largely unknown, and plutonium has a half-life of 24,000 years -- which makes the disposability of plutonium arguable. RFCA should therefore direct safe long-term storage to be built for plutonium.

Enforceability

1. RFCAB understands the difficulties in assessing fines for missed milestones as a result of insufficient funding. However, we realize that it is important for CDPHE to reserve the right to assess penalties particularly if we believe that the administration has not made a good faith effort to obtain necessary funding. It is RFCAB's understanding that RFCA allows for enforcement of all applicable or relevant and appropriate legal requirements. Further, it is our understanding that establishing a process for identifying such standards refers only to early and timely notifications of DOE of all such standards.

2. RFCA states that "the Parties will strive to reach agreement for preserving the use of penalty funds at the site." RFCAB suggests that the Agencies consider amending this statement to include "or to help with related projects deemed important by the community."

The Rocky Flats Citizens Advisory Board is a community advisory group that reviews and provides recommendations on cleanup plans for Rocky Flats, a former nuclear weapons plant outside of Denver, Colorado.

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